

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES G. RIGBY,

Plaintiff,

v.

**FIA CARD SERVICES, N.A., d/b/a
BANK OF AMERICA,**

Defendant.

Case No. 1:11-cv-00373-KD

**MOTION BY DEFENDANT FIA CARD SERVICES, N.A.,
TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant FIA Card Services, N.A. ("FIA"), pursuant to Fed. R. Civ. P. 12(b)(6), hereby moves to dismiss the following claims in Plaintiff's Complaint for failure to state a claim upon which relief can be granted:

- (1) Violation of the Fair Credit Billing Act ("FCBA"), 15 U.S.C. Section 1666(b)(Count I);
- (2) Declaratory Relief premised on 15 U.S.C. Section 1666i (Count II);
- (3) Negligence (Count III); and
- (4) Wantonness, (Count IV).

As set forth in greater detail in the Memorandum of Law that accompanies this Motion, none of these allegations presents any actionable claim against FIA.

WHEREFORE, FIA requests that this Court dismiss Plaintiff's Complaint with prejudice and for such other, further, or different relief as the Court deems just and proper.

Respectfully submitted,

Dated: August 23, 2011

/s John David Collins

John David Collins
Maynard Cooper & Gale PC
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203
Direct: 205-254-1104
Direct Fax: 205-714-6404
jcollins@maynardcooper.com

and

Kathleen H. Dooley
(Applying *Pro Hac Vice*)
Angela H. Zimmern
(Applying *Pro Hac Vice*)
McGuireWoods LLP
201 North Tryon Street, Suite 2900
Charlotte, North Carolina 28202
Telephone: 704.343.2347
Facsimile: 704.373.8935
Email: kdooley@mcguirewoods.com
Email: azimmern@mcguirewoods.com

*Attorneys for Defendant
FIA Card Services, N.A.*

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Kenneth J. Riemer, Esq.
Underwood & Riemer, PC
166 Government Street, Suite 100
Mobile, AL 36602

/s John David Collins
OF COUNSEL